

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

v.

MODUTECH MARINE, INC.,

Defendant.

No.

COMPLAINT

U.S. Bank National Association d/b/a Elan Financial Services (“U.S. Bank”) complains as follows.

1. This is a breach-of-contract action arising from the failure of Modutech Marine, Inc. (“Modutech”) to pay the outstanding balance on its corporate charge card as required under the card agreement. As of July 27, 2022, Modutech owes not less than \$440,003.67 to U.S. Bank.

VENUE AND JURISDICTION

2. This Court has subject-matter jurisdiction over this action under 29 U.S.C. § 1332(a)(1) because U.S. Bank is a citizen of Ohio, Modutech is a citizen of Washington, and the amount in controversy exceeds \$75,000.

3. Venue is proper in this district under 28 U.S.C. § 1391 because Modutech does business in Tacoma, Washington and because Modutech’s conduct giving rise to this complaint occurred in Tacoma, Washington.

PARTIES

4. U.S. Bank is a national banking association with its main office in Ohio. U.S. Bank did business with Modutech under the trade name “Elan Financial Services.”

5. Modutech is a boat-building-and-repair company incorporated in Washington with its headquarters in Tacoma, Washington.

FACTS

6. On April 6, 2012, Modutech applied to U.S. Bank for a charge card known as a “KeyCard” through its authorized representative, chief executive officer Brian Swindahl. A KeyCard is a business-purpose charge card offered by U.S. Bank based upon referrals from KeyBank, N.A., that allows its users to combine, in a single account, travel- and entertainment-related business expenses with goods and services related to business activities.

7. Through Swindahl’s execution of the KeyCard Program Application (“Application”), Modutech agreed to the KeyCard Program Terms and Conditions (“Agreement”) attached to the Application. The Agreement became effective April 6, 2012, the date that Swindahl signed the Application.

8. Under the Agreement, Modutech is solely liable for all purchases, cash advances, fees, and other transactions incurred on the KeyCard.

9. Modutech also agreed in the Agreement to remit payment for all charges incurred over the previous month within fourteen days of the statement date. Any unpaid portion of these charges is considered delinquent.

10. Under the Agreement, U.S. Bank could charge a fee of 2.5 percent of any delinquent amount (a “Delinquency Fee”) if a billing statement was not paid by the issuance of the next statement. U.S. Bank could continue to charge a Delinquency Fee on each statement thereafter if the delinquent amount remained unpaid. U.S. Bank retains the right to recover legal fees and other expenses incurred in collecting any delinquent amount.

11. For approximately ten years, Modutech made charges and other transactions using cards issued by U.S. Bank and remitted payment as required under the Agreement.

1 12. Beginning with the payment due on April 27, 2022, Modutech breached its
2 payment obligation to U.S. Bank. U.S. Bank charged a Delinquency Fee on Modutech's May
3 2022 statement in response to such breach. Modutech again failed to remit any payment,
4 resulting in an additional Delinquency Fees on its June 2022 and July 2022 statements.
5 Presently, a total balance of \$440,003.67 is due from Modutech to U.S. Bank under the
6 Agreement.

7 13. Modutech remains in breach of its payment obligations under the Agreement.

8 **COUNT ONE:**
9 **BREACH OF CONTRACT**

10 14. Modutech entered into a contract with U.S. Bank (the Agreement) to borrow
11 money through the use of a charge card and agreed to remit payment in full for all charges it
12 incurred.

13 15. Modutech has breached the Agreement by failing to make payment when due.

14 16. Modutech's breach is the direct and proximate cause of injury to U.S. Bank,
15 including the debt Modutech owes to U.S. Bank and the costs of this action.

16 **COUNT TWO:**
17 **PROMISSORY ESTOPPEL (IN THE ALTERNATIVE)**

18 17. U.S. Bank allowed Modutech's use of the KeyCard with the justifiable
19 understanding that Modutech would timely remit payment for all charges it accrued.

20 18. Modutech used the KeyCard knowing that U.S. Bank expects repayment for all
21 the charges accrued.

22 19. Modutech owes not less than \$440,003.67 on its KeyCard, including Delinquency
23 Fees.

24 20. Modutech has failed to make payment when due.

25 21. Modutech has been operating its business using U.S. Bank's money, with no
26 benefit to U.S. Bank. Injustice can be avoided only by enforcing Modutech's promise to remit
27 payment to U.S. Bank for all of its KeyCard charges.

DEMAND FOR JUDGMENT

U.S. Bank requests judgment as follows:

- a) that the Court enter judgment;
- b) that the Court award damages in excess of \$440,003.67 with interest;
- c) that the Court award attorney's fees, costs, and other expenses as allowed by contract and/or by law;
- d) that the Court award the costs of litigation; and
- e) that the Court award such other relief as is just and equitable.

DATED this 12th day of August, 2022.

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